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CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Note verbale dated 6 October 1993 from the Permanent Mission of the Republic of Bulgaria to the United Nations addressed to the Secretary-General

The Permanent Mission of the Republic of Bulgaria to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to inform him that the Bulgarian Government welcomes the opportunity to submit written comments and observations on agenda item 147 of the forty-eighth session of the General Assembly, entitled "Convention on jurisdictional immunities of States and their property" (see annex).

The Permanent Mission of the Republic of Bulgaria to the United Nations would be very grateful if these could be circulated as a document of the General Assembly.

Annex

POSITION OF THE REPUBLIC OF BULGARIA REGARDING AGENDA ITEM 147 OF THE FORTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY, "CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY"

1. The Bulgarian Government regards the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission as a good basis for talks with a view to negotiating mutually acceptable provisions of a multilateral international convention. It would also like to express its appreciation for the enormous amount of work carried out by the International Law Commission.

2. The Bulgarian Government welcomes General Assembly decision 47/414 of 25 November 1992, by which the Assembly decided to re-establish the Working Group in the framework of the Sixth Committee at its forty-eighth session. We are of the view that the Working Group, bearing in mind the current economic and commercial conditions, should focus its efforts on bringing into line the different positions and on working out an international consensus on the issues of substance with a view to convening an international diplomatic conference in 1994. In this respect the Working Group's task will be facilitated by the progress made during the forty-seventh session of the General Assembly under the skilful guidance of the Chairman of the Group, Ambassador Carlos Calero-Rodrigues.

3. The Government of the Republic of Bulgaria approves of and accepts the basic concept underlying the draft articles, namely the distinction which is made regarding the activity of the State and based on the criteria acta jure imperii and acta jure gestionis.

4. Bulgaria considers the present formulation of paragraph 1 of article 2, and more specifically the definition of the concepts "court" and "State", satisfactory. It should be borne in mind that the State carries out its functions through its agencies and instrumentalities, and where relevant, through its political subdivisions. For this reason, its regime could not be different from the regime of its subdivisions. We are of the view that the formulation of this provision cannot give rise to any doubts or problems, because normally the organs and individuals through which each State exercises its sovereign authority and through which its responsibility is engaged, are provided for in its Constitution.

5. As regards the concept of "commercial contract or transaction" contained in paragraph 2 of article 2, the Bulgarian Government believes that it represents an acceptable compromise formulation. Without presently having a legal definition, both criteria for defining commercial transactions (character and purpose) are accepted in the Bulgarian legislation. At the same time, Bulgaria would prefer the commercial character of a transaction to be determined mainly on the basis of its nature, i.e. we are of the opinion that the character of the transaction itself should determine its purpose. The requirement of double qualification, more specifically the use of the criterion "purpose", could in the future give rise to many disputes as a result of different interpretations.

The arguments in favour of the use, as "a preventive measure", of the "purpose" of a transaction as a criterion in determining its character are not very strong considering the provisions of paragraph 1 of article 6, according to which the court of the forum State determines in its own way the exercise of the immunities of the foreign State. Besides, it is very important to provide the necessary protection for all parties to a given commercial transaction, which from the very beginning should be advised of its purpose and the ensuing possibility for the State to invoke jurisdictional immunity. Notwithstanding the outlined considerations, in case a compromise has to be reached through the adoption of the criterion of the "purpose" of a transaction, we consider the compromise formulation of the Chairman of the Working Group (A/C.6/47/L.10, para. 15) acceptable, according to which, at the time of the conclusion of the transaction, the respective State should expressly indicate its purpose.

6. The formulation of article 10 is also acceptable for the Bulgarian Government. The participation of Bulgarian State enterprises in the international trade exchange does not present any difficulties from the point of view of the internal law of the country. In its development over the last decades, the Bulgarian economic legislation is persistent in its position in favour of the non-liability of the State-owned economic enterprises for State debts and vice versa. Under the express provision of paragraph 2 of article 1 of The Transformation of State-owned Enterprises into Single-Person Commercial Partnerships Act, enterprises cannot be granted administrative competence in connection with foreign economic activities. Under the principles of the current Law on Commerce and the established views in the legal doctrine, the enterprises founded on the basis of State property are subject to the private law and State property will be transformed into property belonging to the newly founded economic entity (commercial company). Therefore, with regard to these enterprises, the common provisions of the civil law and the international law will be applied.

7. The Bulgarian Government would like to express its support for the provisions of article 16 regarding the immunities of the ships owned by the State or operated by the State for non-commercial purposes, as well as those of the naval ships. Along with this, Bulgaria would prefer it if the formulation of article 16 could be brought into line with article 96 of the 1982 United Nations Convention on the Law of the Sea.

8. The Bulgarian Government shares the view of a number of countries that, in those cases when the State does not enjoy jurisdictional immunity, it should be entitled to the same rights as the other parties to the proceedings. Therefore, its position is in favour of introducing the relevant corrections in the provisions of article 22, paragraph 2, to ensure the necessary guarantees for the payment of court expenses.

9. The Bulgarian Government supports the proposal for the drafting of provisions for the peaceful settlement of disputes ensuing from the interpretation and the application of the future convention, which later will be presented together with the other draft articles to the attention of a multilateral diplomatic conference.

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MEASURES TO ELIMINATE INTERNATIONAL TERRORISM

Letter dated 13 October 1993 from the Permanent Representatives of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and the Permanent Representatives of Georgia and the Republic of Moldova addressed to the Secretary-General

We have the honour to transmit herewith the text of a joint statement by the States members of the Commonwealth of Independent States (CIS) and by the Republic of Georgia and the Republic of Moldova concerning cooperation in combating international terrorism, which was adopted at a meeting of the CIS Council of Ministers for Foreign Affairs on 25 August 1993 (see annex).

We should be grateful if you would distribute this letter and the annex as a document of the forty-eighth session of the General Assembly of the United Nations under agenda item 140 entitled "Measures to eliminate international terrorism".

(Signed) Y. ALIYEV
Acting Permanent Representative
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to the United Nations

(Signed) A. ARZOUMANIAN
Permanent Representative
of the Republic of Armenia
to the United Nations

(Signed) G. BURAVKIN
Permanent Representative
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(Signed) L. KAYUMOV
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of the Republic of Tajikistan
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(Signed) Y. VORONTSOV
Permanent Representative
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(Signed) V. BATIOUK
Permanent Representative
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(Signed) T. PANTIRU
Permanent Representative
of the Republic of Moldova
to the United Nations

Annex

JOINT STATEMENT BY THE STATES MEMBERS OF THE COMMONWEALTH OF INDEPENDENT STATES AND BY THE REPUBLIC OF GEORGIA AND THE REPUBLIC OF MOLDOVA CONCERNING COOPERATION IN COMBATING INTERNATIONAL TERRORISM

The Republic of Armenia, the Azerbaijani Republic, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Russian Federation, the Republic of Tajikistan, Turkmenistan, Ukraine, the Republic of Uzbekistan, the Republic of Georgia and the Republic of Moldova share the concern of the international community about the escalation of terrorist activities in the world which is seriously destabilizing the normal conduct of international relations and threatening the national security of States and the lives of their citizens. They condemn without reservation all manifestations of terrorism and emphasize, in this connection, the need to intensify the efforts to combat such activities by enhancing the effectiveness of international cooperation and further consolidating the efforts of States in this area.

For this purpose, it is essential to determine the priority areas for cooperation among States in combating terrorism and to identify ways of strengthening the contribution of the United Nations to such cooperation. The priorities in the organization of effective counter-measures against terrorism might be:

1. Consolidation throughout the world of a mood of hostility towards terrorism and the formation of a common front among States in combating this evil

Practical steps must be taken to implant in the minds of individuals and peoples the understanding that any act of terrorism or threat of terrorism, whatever its motives, is something evil and represents a crime for which criminal punishment will inevitably follow. The unmasking of the inhuman nature of terrorism must become an integral part of the curriculum in schools and technical and higher education institutions. It would be useful to conduct large-scale information campaigns under the auspices of the United Nations and the relevant specialized agencies in order to consolidate throughout the world a mood of hostility towards terrorism and to unite the efforts of States in combating it. It would be helpful in this connection to issue pamphlets containing information about the threat of terrorism and its harmful consequences for international security and the normal conduct of relations between States and for the exercise of fundamental human rights and freedoms, and also describing the contribution of the United Nations and its agencies to the fight against this dangerous phenomenon. A selection of the fundamental international instruments directed against various manifestations of terrorism should be published in all the official languages of the United Nations. The proclamation by the General Assembly of an official day dedicated to the memory of the victims of terrorism would help to strengthen the action taken by the international community against this phenomenon.

The mass information media have an important role to play in mobilizing international public opinion against terrorism. The specifics of the contribution of the media to this work could be set out in special international recommendations, the drafting of which might be undertaken by UNESCO.

2. Strengthening the international legal basis for collaboration against terrorism

Priority attention must be given to the work which is being done in the United Nations International Law Commission on the establishment of an international criminal court and the drafting of a code of crimes against the peace and security of mankind, for this work will result in important international instruments guaranteeing inescapable punishment for the commission of an act of terrorism in any form whatever, and generally enhancing the effectiveness of the struggle against this phenomenon.

On the basis of the universal conventions against various manifestations of terrorism, a start should be made on the drafting of international recommendations for the provision of practical assistance by States to one another in the pursuit and arrest of criminals.

It would also be useful to take a fresh look at the question of drafting an international legal instrument for the prevention, suppression and elimination of the consequences of acts of terrorism involving nuclear weapons or nuclear materials, and of an international instrument concerning measures for the physical protection of chemical and biological materials, including protection against terrorist intervention.

The potential benefits of genuine cooperation among States in combating terrorism are greatest at the bilateral level. It would be logical to propose that the United Nations Commission on Crime Prevention and Criminal Justice should prepare, on the basis of the provisions of the universal anti-terrorism agreements, a model bilateral agreement concerning cooperation between States in this field.

The United Nations Commission on Crime Prevention and Criminal Justice might also undertake the drafting of recommendations to States to ensure the smoothest possible reintegration into society of former members of terrorist groups who wish to make a fresh start.

3. Seeking ways of strengthening the regulation of the arms trade

It would be useful to study the channels through which terrorists acquire weapons so that the necessary action can be taken to close off such channels. Perhaps it would be helpful to examine ways of improving and strengthening the regulation of the arms trade.

4. Closer coordination of the activities of United Nations agencies involved in international cooperation against terrorism, primarily ICAO, IMO and IAEA

The General Assembly might consider the question of creating at some point under the auspices of the United Nations and its agencies, primarily ICAO, IMO and IAEA, an international machinery for operational cooperation and coordination in the prevention and suppression of acts of terrorism. In the joint efforts directed against terrorism, there must be even closer coordination and cooperation within the United Nations with the action taken by States against crimes closely connected with terrorism, including drug trafficking, unlawful arms dealing, the "laundering" of illegal income, and the smuggling of nuclear and other materials whose use could have fatal consequences for large numbers of people. The question of ways and means of ensuring such coordination in accordance with the findings of the relevant bodies of the United Nations system might be considered by the General Assembly.

5. Enhancing the cooperation of the United Nations with the relevant regional organizations and machinery in combating terrorism

The objective need to strengthen this kind of cooperation is obvious, but effective ways and means of doing so have not yet been found. In our view, it is important to find ways of engaging the cooperation of regional anti-terrorist machinery with the United Nations, especially in practical areas (cf. the "Trevi" group in the European Community). Attention should be given to the possibility (along the lines of existing forms of cooperation in combating drug addiction) of creating under the auspices of the United Nations a system of regional conferences of heads of national anti-terrorism agencies. As an interim step towards this form of cooperation, it might be possible to propose the specific discussion of anti-terrorist matters at the regional preparatory meetings for United Nations Congresses on the Prevention of Crime and the Treatment of Offenders.

6. Provision of assistance to States by the United Nations in dealing with crises caused by acts of terrorism

The mediation efforts of the Secretary-General of the United Nations to secure the release of persons taken hostage by terrorists deserve every support. The good offices of the Secretary-General could play an important role in resolving difficult situations connected with international terrorism. Within the framework of the Security Council and the Sixth Committee of the General Assembly, it would be useful to draw up recommendations concerning the development of this procedure, including proposals for the creation in the Secretariat (for example, in Crime Prevention and Criminal Justice Branch) of a unit to organize assistance to States with regard to the political, legal and technical aspects of combating international terrorism in any form.

7. Exchange, under the auspices of the United Nations, of experience in combating terrorism at the national, bilateral, regional and international levels

We believe it essential for the United Nations, in collaboration with ICAO, IMO and IAEA, to make periodic studies of the implementation of the relevant universal conventions which would include information about incidents caused by terrorist activities, the conduct of their criminal prosecution, and the court sentences. A decision to this effect could be taken at the present session of the General Assembly.

The Secretary-General should be requested to prepare, in conjunction with States and the institutions of the United Nations system, a compendium of national laws and regional and bilateral agreements on matters relating to the struggle against various manifestations of terrorism.

A useful contribution to the exchange of experience in combating acts of terrorism could be made by holding workshops and training courses organized by United Nations agencies and by conducting comparative research and providing technical assistance to States in matters relating to the struggle against terrorism.

* * *

The evil of terrorism has also put down its roots in the territories of the States adopting this joint statement. Crises and conflicts provide fertile ground for escalation of the activities of terrorist groups whose victims are innocent people. The interlocking of terrorist groups with elements of the drugs mafia and organized crime creates a serious threat to the development of the processes of democratic reform in these States. In these circumstances, the States adopting this joint statement cannot stand aside from the struggle against manifestations of terrorism. Their priorities in combating terrorism include:

- The accession of States to the universal agreements against acts of international terrorism;

- The drafting, on the basis of these international legal instruments and their further development, of specific bilateral and multilateral intergovernmental and interdepartmental agreements for combating concrete manifestations of terrorism;

- The improvement and harmonization of the relevant national legislation of the States adopting this joint statement, in accordance with generally accepted international legal rules.

The States adopting this joint statement intend to continue to make their contribution to the consolidation of the action taken by the world community to combat terrorism.